

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #9	CCRB Case #: 201510775	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/22/2015 1:50 PM	Location of Incident: [REDACTED]	Precinct: 47	18 Mo. SOL 6/22/2017	EO SOL 6/22/2017	
Date/Time CV Reported Tue, 12/22/2015 5:14 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 12/22/2015 5:14 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM John McLoughlin	26642	941073	047 PCT
2. POM Kevin Mockel	21947	947261	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Helgersen	31441	938648	047 PCT
2. POM Elvis Cole	09585	947728	047 PCT
3. POM Edwin Vega	27670	948435	047 PCT
4. SGT Miguel Sanchez	4645	940701	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM John McLoughlin	Abuse of Authority: PO John McLoughlin stopped § 87(2)(b) [REDACTED].	A . § 87(2)(g) [REDACTED]
B . POM John McLoughlin	Abuse of Authority: PO John McLoughlin frisked § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . POM John McLoughlin	Abuse of Authority: PO John McLoughlin searched § 87(2)(b) [REDACTED].	C . § 87(2)(g) [REDACTED]
D . POM John McLoughlin	Discourtesy: PO John McLoughlin spoke discourteously to § 87(2)(b) [REDACTED].	D . § 87(2)(g) [REDACTED]
E . POM Kevin Mockel	Discourtesy: PO Kevin Mockel spoke discourteously to § 87(2)(b) [REDACTED].	E . § 87(2)(g) [REDACTED]
F . POM Kevin Mockel	Abuse of Authority: PO Kevin Mockel threatened to issue a summons to § 87(2)(b) [REDACTED].	F . § 87(2)(g) [REDACTED]
G . POM Kevin Mockel	Abuse of Authority: PO Kevin Mockel refused to provide his name and shield number to § 87(2)(b) [REDACTED].	G . § 87(2)(g) [REDACTED]
H . POM John McLoughlin	Abuse of Authority: PO John McLoughlin refused to provide his name and shield number to § 87(2)(b) [REDACTED].	H . § 87(2)(g) [REDACTED]
I . POM John McLoughlin	Other: There is evidence suggesting PO John McLoughlin provided a false official statement in violation of Patrol Guide Procedure 203-08.	I . § 87(2)(g) [REDACTED]

Case Summary

On December 22, 2015, § 87(2)(b) filed this complaint via the CCRB website. Video footage captures a portion of the incident.

On December 22, 2015, at approximately 1:50 p.m., § 87(2)(b) and his § 87(2)(b)-old son, § 87(2)(b) were inside § 87(2)(b)'s vehicle in the vicinity of § 87(2)(b) in the Bronx. § 87(2)(b) testified that he had just taken § 87(2)(b) to a theater to see a movie when they stopped to pick up food from a Jamaican Bakery located at § 87(2)(b). § 87(2)(b) exited the vehicle and entered the bakery while § 87(2)(b) remained inside the vehicle, parked directly in front of the bakery.

While § 87(2)(b) stood in line inside the bakery, PO John McLoughlin of the 47th Precinct entered the bakery and escorted § 87(2)(b) outside (**Allegation A**). Video footage from inside the bakery captures this from two separate angles.



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Just outside the bakery, and not captured on video, PO McLoughlin frisked § 87(2)(b) (**Allegation B**) and allegedly searched inside § 87(2)(b)'s front sweatshirt pocket and front pants pockets (**Allegation C**).

PO McLoughlin testified that he stopped § 87(2)(b) because § 87(2)(b) matched the description of a perpetrator for a dispute with a firearm job at § 87(2)(b) which was transmitted over the radio a couple minutes prior (Board Review 01). § 87(2)(b) is approximately 230 feet from § 87(2)(b) and § 87(2)(b) between the two locations (Board Review 02). The radio transmission regarding the alleged dispute with a firearm indicated that the perpetrator was a heavy-set male with long hair, wearing a red shirt and black pants (Board Review 03). § 87(2)(b) is a slim black male with short hair, and he was wearing a red hooded sweatshirt and dark pants during the incident.

After PO McLoughlin escorted § 87(2)(b) out of the bakery, § 87(2)(b) exited his vehicle, which he left double parked directly in front of § 87(2)(b) and asked what was happening with respect to his son. § 87(2)(b) alleged that PO McLoughlin responded by saying, "Shut the fuck up," (**Allegation D**). § 87(2)(b) alleged that PO Kevin Mockel of the 47th Precinct told him that if he did not "shut the fuck up," that he would be issued a summons for double parking (**Allegations E and F**). § 87(2)(b) alleged that he asked PO McLoughlin and PO Mockel for their names and shield numbers, but neither officer provided his name or shield number (**Allegations G and H**).

Neither § 87(2)(b) nor § 87(2)(b) was issued a summons or arrested as a result of the incident. PO McLoughlin prepared a Stop, Question and Frisk Report regarding § 87(2)(b) (Board Review 04).

The CCRB found evidence suggesting that PO McLoughlin provided a false official statement regarding this incident (**Allegation I**).

Mediation, Civil and Criminal Histories

- Both § 87(2)(b) and § 87(2)(b) accepted mediation during their respective interviews at the CCRB on January 7, 2016. However, after the interview of PO John McLoughlin at the CCRB on January 13, 2016, it was determined by Deputy Chief of Investigations Winsome Thelwell that the case would be fully investigated.
- Neither § 87(2)(b) nor § 87(2)(b) has any criminal convictions in New York City in the last 10 years (Board Review 05).
- Neither § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim regarding this incident (Board Review 06).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) is involved (Board Review 07).
- This is the first CCRB complaint in which § 87(2)(b) is involved (Board Review 08).
- PO John McLoughlin has been a member of service for 10 years and there are no substantiated CCRB allegations against him.
- PO Kevin Mockel has been a member of service for seven years and there are two substantiated CCRB allegations against him, one for a frisk and one for a search of a person. The CCRB recommended a command discipline for each substantiated allegation, and the NYPD issued PO Mockel instructions for each.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) testified that the officer who escorted him out of the bakery was the officer who frisked and searched him (Board Review 09). PO McLoughlin acknowledged being the sole officer who escorted § 87(2)(b) out of the bakery and he acknowledged frisking § 87(2)(b) (Board Review 10). Therefore, Allegations A-C were pleaded against PO McLoughlin.
- § 87(2)(b) testified that during the incident, the officer who spoke discourteously to him mentioned that his father worked for § 87(2)(b) (Board Review 11). PO McLoughlin testified that his father worked for § 87(2)(b) and that he told this to § 87(2)(b) during the incident. Therefore Allegation D was pleaded against PO McLoughlin.
- § 87(2)(b) testified that he believed PO McLoughlin's partner spoke discourteously to him and threatened to issue him a summons. PO Mockel was PO McLoughlin's partner, and PO Mockel testified that he was the primary officer interacting with § 87(2)(b) (Board Review 12). Therefore, Allegation E was pleaded against PO Mockel.
- § 87(2)(b) testified that he asked each officer on scene at § 87(2)(b) he believed there were four (each of whom was in plainclothes), but he was not sure on the exact number—for their names and shield numbers, but no one provided this information to him. § 87(2)(b) testified that he only saw two officers on scene during the course of the incident. This was partially corroborated by an independent witness, § 87(2)(b) who testified that there were two or three officers in total (Board Review 13). PO McLoughlin testified that he did not

remember if additional officers responded, and PO Mockel testified that 10 officers, uniformed and plainclothes, responded, but he did not remember anyone in particular.

Each additional member of the 47th Precinct anti-crime team either denied responding to the scene (Board Review 14 and 15), or the supervisor, Sgt. Sanchez (Board Review 16), testified that they were with him, away from § 87(2)(b). The Event does not list units who responded to § 87(2)(b) only to the radio run location, § 87(2)(b). Given that it is undisputed that PO McLoughlin and PO Mockel were on scene, and that the investigation was unable to determine if additional officers responded, the only refusal to provide name and shield number allegations were pleaded against PO McLoughlin and PO Mockel.

Allegations not pleaded

- Abuse of Authority: A frisk allegation and search allegation were not pleaded against PO Mockel or any other officer. Although § 87(2)(b) alleged that two or three officers in addition to PO McLoughlin frisked and searched § 87(2)(b) testified that only PO McLoughlin frisked and searched him. Given that the victim of the frisk and alleged search testified that only PO McLoughlin was involved in these actions, the allegations of a frisk and a search of § 87(2)(b) were only pleaded against PO McLoughlin.

Allegation A – Abuse of Authority: PO John McLoughlin stopped § 87(2)(b)

It is undisputed that PO McLoughlin stopped § 87(2)(b) inside of a Jamaican Bakery located at § 87(2)(b) in the Bronx. The stop is captured on video.



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A couple of minutes prior to the stop of § 87(2)(b) a 911 caller reported that there was a dispute inside of a restaurant located at § 87(2)(b) (Board Review 17). § 87(2)(b) is approximately 230 feet away from § 87(2)(b) on the same side of the street, but on a separate block. The 911 caller alleged that a heavy-set male with long hair who was wearing a red shirt and black pants pulled out a firearm during the dispute. A radio transmission was made by Central Communications reporting a dispute with a firearm at § 87(2)(b) and that the alleged perpetrator was a heavy-set male with long hair wearing a red shirt and black pants (Board Review 03). This description was immediately followed by a communication that the alleged perpetrator remained inside § 87(2)(b) and that a call-back would be done to confirm this. A couple minutes later, Central Communications confirmed that the alleged perpetrator remained inside of § 87(2)(b). § 87(2)(b) is a slim black male, § 87(2)(b) old, with short hair (Board Review 18). § 87(2)(b) was wearing a red hooded sweatshirt and dark pants. It is undisputed that no observation of a firearm was made on § 87(2)(b)'s person. § 87(2)(b) and an anonymous § 87(2)(g) witness (Board Review 19) each testified that § 87(2)(b) exited a vehicle which was parked directly in front of the bakery

§ 87(2)(g)

Allegation C – Abuse of Authority: PO John McLoughlin searched § 87(2)(b)

§ 87(2)(b) alleged that immediately after PO McLoughlin frisked him, PO McLoughlin reached inside the pocket of his hooded sweatshirt and inside the front pockets of his pants. § 87(2)(b) corroborated that PO McLoughlin searched § 87(2)(b) an § 87(2)(g) witness who was working at the bakery at the time of the incident, corroborated that § 87(2)(b) was “searched,” but he was not sure specifically what the search entailed.

PO Mockel, the only other officer who was identified by the investigation as being on scene, testified that he did not see § 87(2)(b) get frisked or searched because he was facing the opposite way and his attention was focused on § 87(2)(b)

When PO McLoughlin was asked if he searched § 87(2)(b) PO McLoughlin responded, “I don’t remember that.” PO McLoughlin testified that he did not feel anything including anything resembling a weapon when he frisked § 87(2)(b)

People v. Rodriguez 18 Misc. 3d 1124(A) (2008) states that once the limited intrusion of a frisk fails to reveal a weapon, the search must stop (Board Review 22).

§ 87(2)(g)

Allegation D – Discourtesy: PO John McLoughlin spoke discourteously to § 87(2)(b)

Allegation E – Discourtesy: PO Kevin Mockel spoke discourteously to § 87(2)(b)

Allegation F – Abuse of Authority: PO Kevin Mockel threatened to issue a summons to

§ 87(2)(b)

After PO McLoughlin escorted § 87(2)(b) out of the bakery located at § 87(2)(b) exited his vehicle, which was double parked directly outside, and approached PO McLoughlin.

§ 87(2)(b) alleged that after asking what was happening with respect to his son, PO McLoughlin responded, “Shut the fuck up.” § 87(2)(b) alleged that PO Mockel then told him that if he did not “shut the fuck up,” he would be issued a summons for double parking.

§ 87(2)(b) testified that § 87(2)(b) and PO McLoughlin and PO Mockel were yelling back and forth at one another, but he did not hear any officer use profanity during the incident. § 87(2)(b) testified that he was unable to hear what if any conversation occurred outside the bakery, because he remained inside the bakery for the duration of the incident.

Both PO McLoughlin and PO Mockel denied using profanity during the incident, and each denied hearing any other officer use profanity during the incident.

New York State Vehicle and Traffic Law Article 32, Section 1200 indicates that no person shall stop, stand or park a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal (Board Review 28).

§ 87(2)(g)

[REDACTED]

Allegation G – Abuse of Authority: PO Kevin Mockel refused to provide his name and shield number to § 87(2)(b)

Allegation H – Abuse of Authority: PO John McLoughlin refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that he asked PO Mockel and PO McLoughlin for their names and shield numbers, but neither officer provided him with this information. § 87(2)(b) testified that he did not recall if § 87(2)(b) ever asked an officer for their name or shield number.

PO McLoughlin testified that he did not recall § 87(2)(b) ever asking him for his name and shield number, and that he never provided his name or shield number to § 87(2)(b). PO McLoughlin’s memo book indicated that he provided his name and shield number to § 87(2)(b). In his interview at the CCRB, the undersigned pointed out to PO McLoughlin that his memo book indicated that he provided his name and shield number to § 87(2)(b). PO McLoughlin then testified that he did provide his name and shield number to § 87(2)(b). PO McLoughlin stated that the father never asked for his or any officer’s name or shield number, but

because § 87(2)(b) was upset, PO McLoughlin provided this information to him by saying his name and showing his shield. PO McLoughlin testified that he never verbally provided his shield number.

PO Mockel's memo book stated that he and PO McLoughlin provided their name and shield number to § 87(2)(b). PO Mockel testified that § 87(2)(b) asked him and PO McLoughlin for their respective names and shield numbers. PO Mockel testified that both he and PO McLoughlin verbally provided their names and shield numbers to § 87(2)(b) and that neither presented their badge to § 87(2)(b) but each officer's shield was in plain view for § 87(2)(b).

§ 87(2)(b) alleged that he called the 47th Precinct immediately after the incident in an attempt to identify the officers involved in the incident so that he could file a complaint against them. The 47th Precinct Command Log notes that § 87(2)(b) called at 2:25 p.m. on December 22, 2015, to complain about his son being stopped by plainclothes officers and that the officers refused to provide their shield numbers when asked (Board Review 27). § 87(2)(b) did not provide the name or shield number of any officer to the CCRB.

Patrol Guide Procedure 203-09 stipulates that officers must clearly state their name and shield number, or otherwise provide them, to anyone who requests them to do so, allowing the person ample time to note this information (Board Review 23).

§ 87(2)(b) PO Mockel testified that § 87(2)(b) asked the officers for their names and shield numbers; PO McLoughlin testified that § 87(2)(b) never asked an officer for their name or shield number. PO Mockel testified that PO McLoughlin verbally provided his shield number to § 87(2)(b). PO McLoughlin testified that he never verbally provided his shield number. Moreover, PO McLoughlin originally testified that he never provided his name or shield number to § 87(2)(b) and his testimony changed only after the undersigned pointed out that PO McLoughlin wrote in his memo book that he provided his name and shield number to § 87(2)(b).

§ 87(2)(b) consistently reported that the involved officers refused to provide their names and shield numbers to him. This was documented in the 47th Precinct Command Log, in the complaint he filed with the CCRB via the CCRB website, and in his sworn statement to the CCRB. § 87(2)(b) never reported anything to the contrary, and although it is clear he wished to file a complaint against the officers involved, § 87(2)(b) never provided the CCRB with any officer's name or shield number.

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Allegation I – Other: There is evidence suggesting PO John McLoughlin provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB recommends that the NYPD conduct further investigation, as there is evidence to suggest that PO McLoughlin provided a false official statement. The evidence is as follows.

PO McLoughlin was interviewed by the CCRB regarding this incident on January 13, 2016, (Board Review 10) and January 26, 2016 (Board Review 26). Below are seven specific portions of PO McLoughlin’s testimony, each of them material to the investigation, which were false, self-contradictory, or controverted by multiple parties.

- (1) On January 13, 2016, PO McLoughlin testified that the Event (Board Review 01) which he had searched for on the ICAD database, printed, brought with him to his CCRB interview, and referred directly to during questioning did not list a race for the perpetrator. In fact, the first word of the substantive section of the Event is the race of the perpetrator, Asian.

During PO McLoughlin’s interview at the CCRB on January 26, 2016, PO McLoughlin was presented a copy of the Event, and PO McLoughlin confirmed that the Event listed a race for the perpetrator. When asked why he previously testified that the Event did not list a race for the perpetrator, PO McLoughlin stated that he must have not seen it, and he apologized for missing it.

- (2) PO McLoughlin testified that § 87(2)(b) ran from in front of § 87(2)(b) the location of the reported dispute with a firearm, to § 87(2)(b) the location where PO McLoughlin stopped § 87(2)(b). This was not corroborated by anyone interviewed by the CCRB, and § 87(2)(b) and an § 87(2)(b) independent witness all denied that § 87(2)(b) was ever in front of § 87(2)(b) § 87(2)(b).
- (3) When asked if PO McLoughlin ever searched § 87(2)(b) PO McLoughlin stated, “I don’t remember that.” PO McLoughlin indicated in the Stop, Question and Frisk Report that he did not search § 87(2)(b) and an independent witness, § 87(2)(b) each testified that PO McLoughlin searched § 87(2)(b).
- (4) PO McLoughlin testified that § 87(2)(b) never provided a false, evasive or inconsistent answer to an officer’s question, but he wrote the opposite in his memo book and in a Stop, Question and Frisk Report.
- (5) When confronted with the above inconsistency noted in point four between his testimony and the Stop, Question and Frisk Report, PO McLoughlin testified that the box indicating that § 87(2)(b) provided an evasive answer in the Stop, Question and Frisk Report was checked by mistake. When the undersigned pointed out that PO McLoughlin wrote in his memo book that § 87(2)(b) was evasive to his questions, PO McLoughlin testified that this entry referred to § 87(2)(b) asking, “What are you doing,” as PO McLoughlin escorted him out of the bakery. Not only is such a statement not evasive, it is not a response to a question asked by PO McLoughlin—PO McLoughlin testified that he did

not ask a question to § 87(2)(b) inside the bakery. Moreover, PO McLoughlin was unable to explain why if he considered this statement to be evasive, did he testify that § 87(2)(b) never provided an evasive answer, and why he testified that the corresponding box on the Stop, Question and Frisk Report was checked by mistake. When confronted with this inconsistency, PO McLoughlin responded, “I don’t recall. I don’t know.”

- (6) PO McLoughlin testified that § 87(2)(b) never asked for his name or shield number. § 87(2)(b) and PO Mockel both testified that § 87(2)(b) asked PO McLoughlin for his name and shield number.
- (7) PO McLoughlin testified that he never provided his name or shield number to § 87(2)(b) but he wrote the opposite in his memo book. When confronted with this contradiction, PO McLoughlin then testified that he verbally provided his name and pointed to his shield for § 87(2)(b) although PO McLoughlin maintained that § 87(2)(b) never requested his name or shield number.

Patrol Guide Procedure 203-08 (Board Review 24) states that an officer is prohibited from making a false official statement, and that an officer found to have made such a statement will be subject to disciplinary action. According to Department of Correction v. Centeno, OATH Index No. 2031/04 (2005) the statement must be proven to have been made, material, and intentionally false (Board Review 25).

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

